IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 685 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

JAYANTILAL @ JENTILAL BHAGWANJI PARMAR

Appearance:

1. Civil Revision Application No. 685 of 2001

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1-1/4-1/4

MR HR PRAJAPATI for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/08/2001

ORAL JUDGEMENT

Rule. Mr.H.R.Prajapati, learned counsel waives service of notice of rule on behalf of respondent.

2. This matter has come up for admission. But at the joint request made by the learned counsel for the parties, this matter is taken up for final hearing today.

3. Petitioners herein, being aggrieved by the judgment and order dated 30-4-2001 passed in Civil Misc. Appeal No.49 of 2000 in the matter of proceedings under Sec.29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (`the Act' for short) has preferred this Civil Revision Application.

4. Brief facts of the case are as under:

4.1 The present petitioners initiated proceedings under Sec.24 of the Act against the respondent-landlord for providing essential services of latrine. They also preferred application Ex.5 producing therewith affidavit of one of the petitioners at Ex.17 and two other affidavits of independent persons at Exs.18 and 19 for interim direction to permit them to use the latrine and to restrain the respondent from disturbing them from using the said latrine and alternatively, to allow them to construct a new latrine in the tenanted premises at their own cost.

4.2 Respondent appeared through his advocate by filing common written objections at Ex.13 to application as well as application for interim direction. It was contended that there was no cause of action for filing the said application. They came out with the case that latrine in question was got constructed recent to the filing of said application by the respondent and, therefore, petitioners were not entitled to use the same. It was further contended that petitioners were using the public latrine situated in the said vicinity. According to him, petitioners were not entitled to any relief either interim or final one.

4.3 Considering the rival submissions of the parties and also taking into consideration the evidence on record, the trial Court held that as the petitioners failed to make out a prima-facie case, no interim relief can be granted in favour of petitioners. The trial Court also held that if petitioners would not be permitted to use the latrine in question, no irreparable loss or injury or inconvenience would be caused to them and hence, interim application was dismissed.

4.4 The petitioners, being aggrieved by the said order, preferred appeal being Civil Misc. Appeal No.39 of 2000 in the Court of learned District Judge at

Jamnagar. However, said appeal was dismissed by the learned District Judge vide judgment and order dated 30-4-2001 which is giving rise to the present revision.

5. Heard learned counsel appearing for the respective parties. Also gone through the reasoned judgment and order passed by the Court below as also documentary evidence shown to me by the learned counsel for the respective parties.

6. The facts emerged from the proceedings are that the petitioners are the tenants of respondent landlord and so, the relation between the petitioners and the respondent is tenants and landlord. Previously, one Mithibai was the owner of the property in question and petitioners are the tenants of said Mithibai since last 32 years and he was staying there in the tenanted premises with his family members. As the said property was purchased by the present respondent recent to the filing of the suit, he became owner thereof. Respondent filed Regular Civil Suit No.136 of 1999 for possession of the suit property against present petitioners. Present petitioners have also filed one Criminal Case No.1765 of 1999 against the present respondent landlord for disconnecting the essential services of providing latrine facility and have also approached the Collector for necessary order either to allow them to use the latrine or to permit them to construct a new latrine in the tenanted premises at their own cost. But same could not be decided by the Collector and, therefore, as a last resort, proceedings were initiated before the Court below under Sec.24(3) of the Act.

7. Learned counsel for the petitioners, Mr.Suresh M. Shah, has mainly argued that the present petitioners and deceased-Alarakha Darvesh Bloch were using the latrine as a basket type latrine for the last 32 years along with the original landlord. But as the State Government has abolished the said system of basket type latrine, all the concerned were directed to convert the same into flush one for which, subsidy was also introduced and, therefore, respondent landlord has converted said basket type latrine into flush one and thereafter, he was restraining the petitioners from using the same. It is contended by him that as the landlord wants possession of the property anyhow, he is harassing the petitioners. The petitioners have also approached various authorities but they could proceed further in the matter. It is further contended that both the Courts below have not taken into consideration the prima-facie material produced by the petitioners along with their application.

It is contended that Court below ought to have taken into consideration the independent evidence namely, Exs.18 and 19 together with the affidavit of one of the petitioners Ex.17. Drawing my attention towards the above referred affidavits and also the panchnama prepared by the Commissioner, it is argued that the petitioners were able to establish their prima-facie case and, therefore, Court ought to have granted mandatory injunction in their favour. Finally it is argued that as order passed by the Court below on the face of it is illegal, erroneous and unsustainable, interference of this court is required at this stage.

8. Whereas learned counsel for the respondent landlord, Mr.H.R.Prajapati, who has also produced his written submissions on behalf of the respondent, has argued that Civil Misc. Application filed by the petitioners under Sec.24 of the Act is not maintainable at all. According to him, application under Sec.24(8) of the Act can be filed by the tenant only in case where the landlord either by himself or through any person acting or purporting to act on his behalf, without just or sufficient cause, cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him. But here in this case, according to him, no cause of action has arisen for the petitioners to initiate the proceedings as the tenants were not enjoying such facility.

8.1 He has relied upon the case of Kanaiyalal Chandulal Monim Vs. Indumati T. Potadar and Another, AIR 1958 S.C. 444. It is contended by him that the petitioners-tenants have failed to establish their prima-facie case that they were in enjoyment of the essential service of latrine from very beginning and Courts below have prima-facie come to the conclusion that latrine has been recently constructed and, therefore, this Court, in its revisional jurisdiction, cannot upset the finding of facts at interlocutory stage. Drawing my attention towards mark 3/6, which is a copy of the application submitted by the tenants to the Collector, it is contended that the petitioners in their application have clearly mentioned that in the rented premises, there is no facility of latrine and landlord is using the latrine situated in his place and petitioners are not being allowed to use it. According to him, it is their own admission that there is no latrine in the suit premises and, therefore, question of granting the essential service of latrine to the petitioners at this stage does not arise.

9. There cannot be any dispute regarding the principles laid down by the Apex Court in the above reported case. But it has to be seen whether the principle enunciated by the Apex Court in the above reported case will be applicable to the facts of the present case. What are required to be taken into consideration while deciding the interim application are prima-facie case, balance of convenience and irreparable loss. In this case, both the Courts below have failed to ascertain the prima-facie case or it can be said that the findings arrived at by the Courts below are not based on evidence on record namely, Exs.18 and 19 along with the panchnama prepared by the Commissioner and, therefore, interference of this Court even at the revisional jurisdiction is a must looking to the facts and circumstances of the case. Courts below have also not taken into consideration the fact that the present respondent is a new landlord who has recently purchased the property from the original landlord with the sitting tenant and hence, he would not be having any personal knowledge about the things happening there prior to purchasing the property. In these circumstances, Court below ought to have come to the conclusion that whatever stated by the petitioners on oath with the support of two independent affidavits ought to have been accepted as a prima-facie case.

10. As I have discussed earlier, the facts which have been established from the record are that previously Mithibai was the owner of the property and he was sharing the common basket type latrine with the petitioners. Said fact has been supported by other independent witnesses by way of filing affidavits Exs.18 and 19. But no affidavit of Mithibai has been produced by the respondent-landlord to prove his version. Moreover, no documentary evidence has been produced by anybody on record such as copy of the sale deed, copy of plan sanctioned by the Jamnagar Municipal Corporation for constructing new latrine, copy of permission obtained to construct the said latrine and attornment notice. If any of these documents has been produced on record, it would have been helpful to the Courts below in deciding the prima-facie case of the parties thereby the presence of latrine at the place in question would have been reflected in the description of the property. If a new latrine has been constructed by the respondent-landlord, he must have obtained permission from the Corporation and in absence of that, Court ought to have come to the conclusion that he has converted basket type latrine into flush one and for converting the same, it seems that no permission is required to be obtained from the

Corporation. When landlord has not produced anything coming out with the specific case, Court would have presumed otherwise and would have accepted the say of the petitioners. Over and above, even panchnama prepared by the Commissioner prima-facie establishes that the latrine in question is situated in between the properties of tenant and landlord. Admittedly, it is a common open land where the latrine in question is situated and instead of holding the prima-facie case in favour of petitioners, both the Courts below have ignored all the aspects of the matter and have given finding without considering the evidence on record and, therefore, interference of this Court at this stage is warranted knowing fully well that this court has got limited jurisdiction to interfere with the concurrent judgments. On the one hand, application submitted by the petitioners to the Collector along with the Criminal Case filed under Sec.24 of the Act are not being conducted by the authorities and on the other hand, enjoyment of the primary essential facility of latrine by the petitioners for the last 32 years has been stopped by the respondent in the guise that a new latrine has been constructed by him. Courts below ought to have come to the prima-facie conclusion that this latrine has not been newly constructed by the respondent landlord but it has been converted from basket type latrine to flush one. Considering all the aspects of the matter, I am of the opinion that petitioners are able to prove their prima-facie case that there was a basket type latrine which they were using since last 32 years and respondent-landlord, after converting the same into flush, has restrained the petitioners-tenants from using the same. Since the approach of the Courts below in deciding the prima-facie was not just, legal and proper, interference by this Court at this stage is highly required.

11. Having regard to the above facts and circumstances of the case, petitioners are able to establish their prima-facie that since they are using the latrine in question for the last 32 years, this primary essential facility is required to be provided to them and hence, both the Courts below ought to have held that balance of convenience is in favour of the petitioners. If flush latrine will be permitted to be used by the petitioners during the pendency of proceedings before the Courts below or till the Collector decides their application for constructing a new latrine in their own premises at their own cost, no irreparable loss or damage would be caused to the respondent which cannot be compensated in terms of money. In view of the above

facts and circumstances of the case, the judgment relied upon by the learned counsel for the respondent will not be applicable in this case.

12. I have not discussed the evidence at length because of the fact that the main proceedings including criminal one are pending before the Court below. However, when the learned counsel for the respondent has filed the written submissions calling for a reasoned order, some prima-facie observations have to be made restraining myself from discussing it at length which may prejudice the parties in the pending proceedings.

13. In the result, this Civil Revision Application is allowed. Judgment and order dated 30-4-2001 rendered by the Joint District Judge, Jamnagar, in Civil Misc. Appeal No.49 of 2000 are hereby set aside. Petitioners-tenants are permitted to use the latrine in question and the respondent-landlord is hereby restrained from disturbing the petitioners from using the said latrine. Respondent is hereby directed to break open the lock put on the latrine forthwith and permit the petitioners to use the same. Respondent is at liberty to move again before the Court below if Collector grants permission in favour of petitioners for constructing a new latrine and in that event, Court below should reconsider the same in the changed circumstances without being influenced by the observations made by this Court in this judgment. Court below is directed to dispose of the application filed under Sec.24 pending before it as expeditiously as possible. Rule is made absolute accordingly with no order as to costs.

14. Now the learned counsel for the respondent, Mr.H.R.Prajapati, requests to stay the aforesaid judgment for a period of six weeks. Looking to the facts and circumstances of the case, said request is rejected.

(R.P.DHOLAKIA,J.)

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